

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF EUZKALDUNAK)	APPEAL NO. 06-A-2916
INC. from the decision of the Board of Equalization of)	FINAL DECISION
Ada County for tax year 2006.)	AND ORDER

FRATERNAL PROPERTY EXEMPTION APPEAL

THIS MATTER came on for hearing January 9, 2007, in Boise, Idaho, before Hearing Officer Steve Wallace. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Attorney Louie Uranga, Rental Manager Albert Totorica, Bar Manager Julian Lete and Secretary/Treasurer Patty Haas appeared for Appellant. Chief Deputy Tim Tallman, Deputy Assessor Craig Church, and Deputy Prosecuting Attorney Lorna Jorgensen appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) modifying the protest of the valuation for taxing purposes of property described as Parcel No. R1013001911.

The issue on appeal is what portion of subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602C, the fraternal, benevolent, or charitable corporations or societies exemption.

The decision of the Ada County Board of Equalization is modified.

FINDINGS OF FACT

The assessed land value is \$215,600, and the improvements' valuation is \$323,500, totaling \$539,100. Appellant requests the total value be reduced to \$18,060 based on the position that 96.65% of subject qualifies for a property tax exemption as a fraternal organization.

The subject property is a .15 acre lot improved with a building commonly referred to as The Basque Center located in Boise, Idaho. Subject is owned by Euzkaldunak, Inc., a federally-recognized fraternal organization under § 501(c)(7). The building consists of two floors and a basement, all of which had been given tax exemption status in prior years. Portions of the

building are leased to both non-members and members of the fraternal organization for parties, weddings, and other events. The second floor, approximately 1,320 square feet, is used as a dance practice area, card room, and meeting room. The main floor is 5,909 square feet, 2,330 square feet of which is rentable. It is comprised of a dance hall, a bar, and various storage areas. The basement is approximately 4,898 square feet and includes kitchen and storage areas. There are 2,305 square feet of rentable space in the basement.

The areas that may be rented include the basement, the kitchen, and the main hall on the first floor. These areas were rented to non-members a total of 41 times during 2006. The main hall was rented 37 times, 15 of which were in conjunction with the kitchen. The kitchen was rented 16 times. The downstairs was rented with the kitchen once and separately on one other occasion.

The building has a total of 12,127 square feet, 8,903 of which was considered either commercial (i.e. the bar) or rentable space. The BOE upheld the initial finding of the Assessor that only 12% of subject's total value qualified for exemption. However, in preparation for this appeal, the Assessor discovered that 23.5% was actually the appropriate fraternal portion, which Respondent is now proposing.

There is no dispute regarding the fraternal status of the organization itself or that the building is used for both fraternal and commercial purposes. Rather, this appeal was brought to challenge the amount of commercial usage and the proper calculation of the commercial portion.

Appellant focused on two items; 1) that the bar area is not commercial in nature and should not be valued as such, and 2) the interpretation of Idaho Code § 63-602C regarding how the portion of subject being used commercially should be calculated.

To support the claim that the bar is not commercial, Appellant noted the bar is not advertised to the public nor are there any signs on the exterior of the building indicating a bar is located within. There are no “happy hour” promotions and no food is served. Though it was shown that the bar operated at a small monthly profit, Appellant asserted it was being operated as part of a fraternal organization “for the benefit of the members, their guests, and invitees”, and was not intended to be a public bar. It was mentioned the vast majority of the customers are members and their guests, though an average of one or two non-affiliated customers off the street visit per week. Appellant acknowledged that nobody is denied service because of their membership status.

Regarding the interpretation of Idaho Code § 63-602C, Appellant argued the part of the statute involving the valuation of the commercial portion of subject should be a function of the physical space leased and the amount of time that space was leased (see below). Using this method, Appellant calculated the annual commercial activity amounted to 3.35% of subject's total value.

$$\text{Basement} \quad \frac{2304}{12127} \times .5\% \text{ (percentage of days used for commercial purposes)} = .9\%$$

$$\text{Main Hall} \quad \frac{3500}{12127} \times 10\% \text{ (percentage of days used for commercial purposes)} = 2.9\%$$

$$\text{Kitchen} \quad \frac{698}{12127} \times .26\% \text{ (percentage of days used for commercial purposes)} = .26\%$$

Appellant asserted the intent of the Legislature was not that property completely lose it's exemption if used even once for commercial purposes, but rather that the exemption is lost only for the amount of time the property is used for non-exempt purposes.

Respondent supported the commercial classification for the bar portion of subject on the

grounds that non-members are served. Respondent reasoned that serving non-member customers who wander in from the street qualify the bar as “public”, and thus a commercial enterprise, even though the majority of customers are members and their guests.

Respondent then contended the proper interpretation of Idaho Code § 63-602C was to value the physical portion of the building being used for commercial purposes. It was argued that nothing in the statute allowed for an exemption based on the amount of time subject was used for non-exempt purposes. The Assessor calculated subject’s value as follows:

Main Floor	5,909 sq ft x \$10/sq ft = \$59,090
Second Floor	1,320 sq ft x \$10/sq ft = \$13,200
<u>Basement</u>	<u>4,899 sq ft x \$ 5/sq ft = \$24,495</u>
TOTAL	12,127 sq ft = \$96,785

The portion of subject used exclusively for fraternal purposes was then computed.

Second Floor	1,320 sq ft x \$10/sq ft = \$13,200
<u>Basement</u>	<u>1,904 sq ft x \$5/sq ft = \$ 9,520</u>
TOTAL	3,224 sq ft = \$22,720

\$22,720 divided by \$96,785 = 23.47% (rounded to 23.5%)

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of subject’s exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

As noted earlier, central in this matter is Idaho Code § 63-602C, which reads;

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organizations buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized; provided, that if any building or property

belonging to any such corporation or society is leased by such owner or if such corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and shall assess all merchandise kept for sale, and the trade fixtures used in connection with the sale of such merchandise; provided however, that the lease or use of any property by any such corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

Both parties agree that a portion of subject, in excess of 3% of its total value, was indeed being used commercially and should be assessed accordingly; the issue before us concerns the calculation of that commercial portion.

Statutes granting exemptions, which exist as a matter of legislative grace, are strictly construed against the taxpayer and in favor of the state. Sunset Memorial Gardens v. Idaho State Tax Commission, 80 Idaho 206, 327 P.2d 766 (1958). The burden is on the claimant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. An exemption will not be sustained unless it is within the spirit as well as the letter of the law. Bistline v. Bassett, 47 Idaho 66, 272 P.696 (1928).

The courts are bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized. Canyon County v. Sunny Manor, Inc. 106 Idaho 98, 675 P.2d 813 (1984). Moreover, unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing a statute. Bunt v. City of Garden City, 118 Idaho 427, 430, 797 P.2d 135, 138 (1990).

As correctly referenced by Appellant, the Idaho Supreme Court in the past has granted a charitable exemption to an organization that leased office space in its building to members of its own organization. In Boise Central Trades & Labor Council, Inc. v. Board of Ada County Commissioners, the court held, “[w]orking through [Idaho Code § 63-602C], it is clear the legislature intended to exclude from exemption only those portions of an otherwise exempt property which are leased or used for commercial purposes.” 122 Idaho 67,72; 831 P.2d 535, 540 (1992). The court went on to say, “[a]s far the renting of the Labor Temple to the members of the Labor Council, we conclude that such is not a leasing for ‘commercial purposes’ within the meaning of the statute.” Id.

There is no question the leasing of subject to members of the fraternal organization does not qualify as a commercial use, however, leasing to non-member third parties is definitely a commercial activity under the statute.

The same can be said for the operation of subject’s bar. While it is conceded the majority of patrons are members and their guests, serving customers who wander in from the street, even if they just happened to accidentally stumble onto the establishment, is not in furtherance of the organizations fraternal purposes. It is not even clear that serving non-affiliated guests of members would qualify as an exempt use. That the bar generates only a minimal profit is irrelevant, the fact that it is collecting money outside the scope of the stated fraternal purpose

is enough to render the bar commercial in nature.

Appellant argued the proper method to value the commercial aspects of subject involved the number of days per year the facility was used for such non-exempt activities. To support this position, Appellant relied on the decision in Student Loan Fund of Idaho, Inc., v. Payette County, 138 Idaho 684, 69 P.3d 104 (2003), where a charitable organization was sharing its building and office equipment with a non-exempt enterprise. No lease was involved, however, support fees were paid to the Student Loan Fund (SLFI). The Court recognized that property taxes could be apportioned under Idaho Code, but denied exemption because SLFI failed to raise the claim of partial exemption at the trial level. The Court stopped short of making a determination on a possible partial exemption for SLFI, but did discuss the possibility of apportionment. “It appears that both organizations fully occupy the entire building without limitation of the area where each may conduct its business. Under this arrangement, each organization evidently uses at least fifty percent of the building.” Id. at 690, 69 P.3d at 110. While the implication is that a partial exemption might have been allowed had the issue been brought, there is nothing to indicate that an apportionment based on the amount of time the building and equipment was used for non-charitable purposes would be proper.

Furthermore, a strict and narrow construction of Idaho Code § 63-602C favors Respondent’s approach to subject’s valuation. The statute specifies that if revenue is derived from the leasing of an otherwise exempt building or property “the assessor shall determine the value of the entire building and the value of the part being used or leased for commercial purposes.” (emphasis added). Nothing in the statute expressly grants consideration for the number of times property is used for commercial purposes. While Appellant’s proposition may seem reasonable, there is nothing in the statute to support it. Accordingly, the Board will accept

Respondent's revised percentage calculation of 23.5% as the exempt portion of subject. The decision of the Ada County Board of Equalization is so modified.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, modified to reflect that 23.5% of subject properly qualifies for property tax exemption under Idaho Code § 63-602C. As such, the assessed value of subject is \$412,411.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

DATED this 1st day of May 2007.